

Richardson, Hetty L

From: Jennifer Burns [jburns@maineaudubon.org]
Sent: Thursday, October 12, 2006 2:55 PM
To: Richardson, Hetty L
Subject: Maine Audubon comments re Chapters 305 and 310
Attachments: MA comments re BEP Chp. 305 and 310 amendments.doc

Hetty,
I've attached our written comments.
Jenn

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October 12, 2006

Hetty Richardson
Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: Maine Audubon Comments in Support of Proposed Amendments to Chapters 305 and 310

Dear Ms. Richardson:

I am writing on behalf of Maine Audubon and our 11,000 members and supporters in favor of the proposed amendments to Chapters 305 and 310. Maine Audubon is very pleased to have the opportunity to comment in strong support of these rule amendments because this is the final step in what has been a very long process. These rule changes are connected to recent alterations to our coastal sand dune rules and significant wildlife habitat rules. I'll also discuss the improvement to small wetlands protection.

First, I'll address the coastal sand dune rule changes. The proposed permit by rule amendments to Section 16, activities in coastal sand dunes, put the finishing touches on recommendations made by the Beach Stakeholder Group that were approved by the Maine Legislature. Maine Audubon considers the outcome on the Group's recommendations to be a win-win solution for everyone: wildlife, beach front property owners and beach visitors. The amendments include: allowing minor repairs to be conducted with a permit by rule, deleting beach nourishment from the list of activities for which a permit by rule is available and adding the installation or repair of underground utility lines. Last, the repair or replacement of a patio, deck, driveway or parking area is allowed as long as the dimensions are not increased.

Second, the permit by rule changes also address significant wildlife habitat. The revised significant wildlife habitat rules have already been finally adopted. These rules

reflect decades of hard work and the deep thinking that went into how to best regulate these important habitats. Section 19 of the proposed amendments focuses on significant vernal pools and is truly the result of the Department of Environmental Protection, the Department of Inland Fisheries and Wildlife working, and the Natural Resources Committee's hard work and creative thinking. It provides property owners an opportunity to move forward with their development plans without needing to have the significance of their vernal pool first determined.

Third, Section 20 of the permit by rule changes focuses on high and moderate value wading bird and waterfowl habitat and shorebird nesting, feeding and staging areas. The rule protects high and moderate value shorebird feeding and staging areas and 250 feet around the habitats. These areas have been identified by the Maine Department of Inland Fisheries and Wildlife on maps. These maps are based on specific criteria and have been developed over decades of field work.

The significant wildlife habitat rule will not stop development. An activity that takes place in, on, over, or adjacent to such habitat must meet certain standards which include avoid and minimize impacts. If one's property is large enough to develop outside of the 250 feet of upland habitat, DEP will ask that this happen. If one's property is already developed, an abbreviated permit process (permit by rule) will be available once the BEP approves the amendments. If one's property isn't large enough to accommodate development outside of the 250', DEP will work with the property owner to minimize impacts.

Protecting shorebird habitat is critical in order to ensure that the birds are able to use the rich intertidal habitat available to acquire the large fat reserves needed to fuel their transoceanic flight (Bahamas to Brazil and for some Uruguay, Argentina and Chile). The birds gorge themselves on invertebrates, some eating up to 23,000 individuals in one tidal cycle, to prepare for their long journey. These intertidal areas are the shorebirds' grocery stores.

Maine's Downeast region, in particular, is blessed with spectacular shorebird habitat. The Harrington-Addison area alone has national significance as a shorebird staging area. During 1980's, the coastal zone from Trenton Bay east to Perry was identified as probably the most important fall migratory stopover area in the eastern U.S. for four species of shorebirds (semipalmated sandpipers, semipalmated plovers, white-rumped sandpipers and whimbrels). Once gone, there will be no other places for them to go and the populations will dramatically decline or possibly disappear altogether.

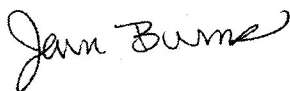
Maine Audubon supports section 20 of the proposed permit by rule. The proposal to allow a permit by rule for parcels with existing development offers a balanced and reasonable approach to the protection of these habitats.

The proposed changes to Chapter 310 reflect the Legislature's intent. LD 2071 directs that the wetlands rules be changed to reduce the exception from a functional assessment and compensation from freshwater wetlands alterations of less than 20,000

square feet to 15,000 square feet and to consider biophysical regions when considering location of compensation. The consideration of biophysical regions allows a new approach to mitigation that would ensure that if mitigation must occur, it will be done in a way that is ecologically valuable, i.e. by identifying important wetlands within the watershed or biophysical region that could benefit from either restoration or protection and that would be targeted for mitigation dollars through an in-lieu fee compensation program. Maine Audubon supports these proposed changes to the wetland permit review process as an acknowledgment that cumulative loss of small wetlands or small portions of large wetlands is a serious ecological problem that can and should be better addressed in our permit review process.

Again, this is a really exciting time. With the Board's approval of these rule amendments, the final step will have been taken in revising these important rules to better protect wildlife habitat while also respecting the needs of property owners. I urge their adoption. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jenn Burns".

Jennifer D. Burns
Staff Attorney and Advocate